

REMARKS

Applicants, through their undersigned attorneys, hereby traverse the requirement for restriction set forth in the July 28, 2005 Official Action issued in the above-identified patent application. The Examiner contends that the originally filed claims were directed to five (5) distinct inventions. These were as follows:

Group I: Claims 1-9, and 24-32 directed to an isolated nucleic acid encoding a polypeptide, a vector and host cell comprising the nucleic acid;

Group II: Claims 10-11 drawn to an isolated polypeptide;

Group III: Claim 12 drawn to an antibody;

Group IV: Claims 13-23 and 41-43 drawn to a method of identifying an agent or a homolog;

Group V: Claims 33-40 drawn to a method for inhibiting function of a nucleic acid and transgenic plant with knockout gene expression.

Additionally, if either the Group IV or V inventions are elected, the Examiner requires applicant to elect one of the sequences from those provided in SEQ ID NOS: 31-39.

Applicants respectfully traverse the restriction between the Group I and Group IV inventions. A withdrawal or modification of the restriction requirement is clearly in order for the reasons set forth below.

According to the MPEP §803.01, there are two criteria for restriction between inventions which are alleged to be patentably distinct: 1) the inventions must be independent and distinct as claimed and 2) there must be a serious burden on the Examiner if the restriction is not required.

Claim 13 and claims dependent therefrom have been amended such that they now depend directly or indirectly from claim 1. Accordingly, the method encompassed by this claim is no longer independent of the Group I invention. It is common PTO practice that once product claims are found to be in condition

for allowance, method claims which recite all the features of the allowed products claims should be rejoined and also considered allowable. Thus, Applicants respectfully request rejoinder of the Group I and Group IV inventions. It is submitted that the Examiner's workload would not be increased by searching the rejoined groups of invention.


In order to be fully responsive however, Applicants hereby elect the claims of the Group I invention for prosecution at this time. As mentioned above, Group I is elected with the understanding that should the product claims be held allowable by the USPTO, method claims reciting the use of the patentable product will be rejoined prior to issuance of the instant application.

Applicants reserve the right to file one or more continuing applications under 35 U.S.C. §120 on the subject matter of any claims finally held withdrawn from consideration in this application.

Favorable consideration leading to prompt allowance of the present application is respectfully requested.

Respectfully submitted,
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